is manifest, however, that the length of the period of deliberation can make no difference in the statement of the principle of liability. It therefore seems correct to say that when the act done under stress of circumstances is the result of an exercise of the reasoning faculties, however rapid, the actor is subjected to the ordinary rules of legal liability. 7 HARVARD LAW REVIEW, 302. So the principle of the "squib" case does not apply, for here is not an instance of instinctive action. Since the defendant's act was deliberate, he should not have been excused on the ground that he acted for self-protection under necessity.

LIABILITY FOR BLASTING. — The precise extent of the liability for damage caused by blasting is doubtful on the authorities. In accord with the view sustained by the weight of authority, that liability attaches irrespective of negligence, is a late decision in New York. In the course of the blasting operations of the defendant upon his own land, a portion of a tree was thrown a distance of some four hundred feet upon the plaintiff's intestate, who was travelling upon the highway, causing her death. A ruling of the trial judge that it was not essential for the plaintiff to establish negligence in order to make out a cause of action was sustained by the Court of Appeals. *Sullivan* v. *Dunham*, New York Law Journal, Jan. 24, 1900.

On principle it is hard to find any real difference between liability for injuries caused by blasting and for those caused by the accidental explosion of a powder magazine. The distinction that the actual explosion was intentional in the one case and not so in the other is immaterial, as in neither instance was there any intent to cause the resulting damage. Upon the keeper of dangerous explosives absolute liability is imposed only when by reason of the location and surrounding circumstances the magazine is a nuisance. *Heeg* v. *Licht*, 80 N. Y. 579. If the magazine is not so situated as to cause reasonable fear of injury to those in the neighborhood, the defendant is liable only for injuries resulting from negligence. 13 HARVARD LAW REVIEW, 310. Similarly it would seem that where the locality and circumstances are such that it was not probable that damage would result to the person or property of others from the use of blasting powder, a defendant should be held liable for a consequent injury only if he failed to use due care. If, however, there was an antecedent probability of such damage, the mere act of blasting was such an unreasonable user as to amount to a nuisance. Liability would then attach to any injury proximately caused.

The leading American case on this subject, on the authority of which the decision in the principal case is vested, is *Hay* v. *Cohoes*, 2 N. Y. 159. Although in that case the facts seem to point to a user so unreasonable as to amount to a nuisance, the court was apparently influenced in their decision by the old theory of absolute liability for trespass; "he that is damaged ought to be recompensed;" a theory which is not generally supported in this country, and which later has been substantially denied in New York. *Losee* v. *Buchanan*, 51 N. Y. 476. The weight of authority follows *Hay* v. *Cohoes* in imposing absolute liability irrespective of the degree of danger, yet in the great majority of cases the facts show that there was an actual nuisance; and this might be said even of the princi-

pal case. As blasting is a useful and often a necessary means for the improvement of land, it would seem better to hold that where it does not amount to a nuisance a defendant should be answerable only if negligent. This position, moreover, is not without authority. *Klepsel* v. *Donald*, 4 Wash. 636.

FOREIGN MARRIAGES — TITLE TO PERSONALTY. — After years of litigation in the English courts, the De Nichols will at last has been set aside. This will, which disposed of a personal estate obtained during a long period of English domicil, was disputed by the testator's widow on the ground that, since the marriage had been contracted at the time of their French domicil, by the French law of community of goods she was entitled to one half the personalty later acquired, though there had been no express marriage settlement. Her right was recognized by the Divisional Court, but the Court of Appeal held that the law of the domicil at the time of death gave the husband title to all the personalty. In the House of Lords this decision has now been reversed and the wife declared entitled to one half the personalty on the ground that since the parties contemplated a French marriage, they must be supposed to contract that their marital rights not only to existing property, but to all future acquisitions wherever they may be domiciled, shall be determined by the law governing the marriage. *De Nichols* v. *Curlier*, [1900] App. Cas. 21. In this country, on the other hand, this precise question as early as 1827 was decided the other way. *Saul's Heirs* v. *His Executors*, 3 Mart. N. S. 569. This view has been followed consistently. *Muus* v. *Muus*, 29 Minn. 115; *Long* v. *Hess*, 154 Ill. 482.

The greater frequency of marriage settlements in European countries than in our own doubtless accounts for this desire of the courts to supply them, when omitted, on what seems to them grounds of obvious justice to a defrauded spouse. Is it not, however, as likely that on change of domicil the parties, in the absence of express agreement, wished to submit all their rights to the law of their new home? This implication of a contract certainly is not in line with any general principle as to the acquisition of property. But two views of the law governing title to personalty have ever been maintained: the law of the domicil of the claimant, and the law of the *situs* of the property. *Green* v. *Van Buskirk*, 7 Wall. 139; *Re Queensland Co.*, [1891] 1 Ch. 536. In the principal case both these tests would concur to fix on the law of England to determine the rights of the wife. Nor is there any peculiarity in the law of family relations that would lead to this departure. The right of a husband to the society of his wife is governed by the law of the place where they are residing. Dicey, Conflict of Laws, 490. Before making an exception to these rules, one may fairly ask for more conclusive reasons than a view of abstract justice, which is at least doubtful.

But even granting the propriety of implying a contract, it should not have been decisive here. The exact question considered in the Divisional Court was; what interest had the plaintiff in the property at the time of the testator's death? In France, the wife would get title to one half the personalty from the moment of acquisition by force of positive law. An English marriage settlement, however, would give the wife no vested legal estate in her husband's personalty. It would be a mere